

Appl. No. : 10/828,571  
Filed : April 20, 2004

## REMARKS

### **Declaration and Supplemental Information Disclosure Statement**

Applicants submit herewith the declaration of Kenneth L. Viera citing an article which is pertinent to U.S. Patent 5,447,969.

### **Amendments to the Claims and Specification**

Claims 20, 21, and 22 have been amended.

The applicants respectfully submit that the amendments add no new matter and are fully supported by the application as originally filed.

### **Newly Added**

No new claims have been added.

### **Improper Claim Form under 37 CFR 1.75(c)**

The Examiner has objected to Claim 20 as being of improper dependent form for failing to limit the subject matter of a previous claim. Claim 20 has been amended to independent claim form. Claim 21 has been amended to be dependent on Claim 20.

### **Rejections under 35 U.S.C. §102(b)**

The Examiner has rejected Claim 1 under 35 U.S.C. §102(b) as anticipated by Kojima et al. (US 5,447,969).

For a proper rejection of a claim under section 102, the cited reference must disclose all elements, features, and steps of the claim. *See e.g., E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 U.S.P.Q.2d 1129 (Fed. Cir. 1988) (emphasis added).

Claim 1 contains the limitation “stable dilute composition”. As shown in the §1.132 Declaration and the accompanying published article, the method of Kojima does not produce a stable dilute composition.

The objection to Claim 1 with regard to Kojima has been overcome above, and it is urged that it be withdrawn.

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**Rejections under 35 U.S.C. §103(a)**

The Examiner has rejected Claim 1-26 under 35 U.S.C. §103(a) as being unpatentable over Kojima, optionally in view of Camper et al. (US 2002/0114850). Claim 20 has been amended to independent form and Claim 21 has been amended to be dependent on amended Claim 20. Claim 22 has been amended to incorporate a new limitation with regard to available chlorine concentration and with regard to stability. The limitation with regard to stability is discussed below with regard to Claim 2.

The Applicant notes that Claim 1 contains the limitation “stable” dilute composition and that Claim 2 contains the limitation “wherein said second solution retains at least 90% of the available chlorine concentration at a storage temperature of 70°F over 27 days.” The Examiner did not comment on these limitations in Claim 1 and Claim 2, therefore, the applicant is unsure as to the basis for the 103 obviousness rejection of Claims 1 and 2 and the 102 anticipation rejection of Claim 1. If the basis is common knowledge or official notice, the Applicant is traversing the rejection by currently submitting a §1.132 Declaration and an accompanying published article to show that the method of Kojima does not produce a stable dilute composition. Therefore, the method of Kojima is not a method for producing a stable dilute composition.

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). (MPEP 2144.03C)

Claims 3-19 are dependent on Claim 2. Amended Claim 21 is dependent on amended Claim 20. Claims 23-26 are dependent on amended Claim 22. The objection to Claims 1-26 with regard to Kojima, optionally in view of Camper have been overcome above, and it is urged that it be withdrawn.

With regard to the other means of purifying the water used to dilute the hypochlorite solution besides ion-exchange in Claims 16-18, the Examiner makes the assertion that “it would have been obvious to one skilled in the art to use any known available means or compounds as long as a dilute hypochlorite solution with the desired pH as disclosed in Kojima ‘969 can be obtained.” The Applicant asserts that it would not be obvious to one skilled in the art and points to the fact that, as shown in Tables I and III of the specification, the dilute hypochlorite solutions have different levels of stability based on the method used to purify the water. It is also noted that Table II shows that

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different methods of purification have different levels of the impurity, TOC. With regard to the Examiner's assertion that any known compounds are obvious in view of Kojima, the Applicant points out the Kojima chose compounds that lead to unstable solutions and produce a carcinogen, chloroform, which would not be suitable for many of the intended uses of this solution. Therefore, the Applicant traverses the Examiner's assertion of obviousness based on common knowledge of one skilled in the art.

With regard to Camper, the Examiner asserts that the alkali metal hypochlorite solution uses described in [0023] of Camper can be applied to teach uses to treat infections, arthritis, allergies, etc. Applicant notes that neither Camper nor Kojima disclose a method of preparing a stable dilute hypochlorite solution and that neither Camper nor Kojima disclose the use of this solution to treat surfaces described in original and amended Claim 21. With regard to "allergens" in Claim 20, this is not the same as "allergies" in Camper. Therefore, the Applicant traverses the Examiner's assertions with regard to Camper.

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### **CONCLUSIONS**

In view of the foregoing amendments and remarks, Applicants submit that the application is in condition for allowance. If, however, some issue remains that the Examiner feels may be addressed by Examiner's amendment, the Examiner is cordially invited to call the undersigned for a brief discussion.

Please charge any additional fees, including fees for additional extensions of time, or credit overpayment to Deposit Account No. 03 2270.

Respectfully submitted,  
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